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 9 KING OF THAI NOODLE #2, INC.,
 10 A California Corporation

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES, an individual; and
 12 DISABILITY RIGHTS ENFORCEMENT,
 13 EDUCATION, SERVICES-HELPING YOU
 14 HELP OTHERS, a California public benefit
 corporation,

Plaintiffs,

15 vs.

16 KING OF THAI NOODLE #2, INC., a California
 17 corporation; LAW SZE CHING; and CHAN WEI
 18 YUNG,

19 Defendant.

Case No. 08-1877-WHA

**DEFENDANT KING OF THAI NOODLE
 #2, INC., A California Corporation
 ANSWER TO COMPLAINT FOR
 INJUNCTIVE RELIEF AND DAMAGES**

DEMAND FOR JURY TRIAL

COME NOW Defendant KING OF THAI NOODLE #2, a California Corporation
 ("Defendant") and answers the COMPLAINT of CRAIG YATES, an individual and "DREES"
 ("Plaintiffs") as follows:

Paragraph 1 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
 to the allegations in paragraph 1 of the COMPLAINT, and on that basis, Defendant denies them.

Paragraph 2 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
 to the allegations in paragraph 2 of the COMPLAINT, and on that basis, Defendant denies them.

1 Paragraph 3 of the COMPLAINT: Defendant admits that the court has jurisdiction in this
2 action, including supplemental (referred to as “pendant” in the COMPLAINT) jurisdiction over the
3 state causes of action. Defendant reserve the right to petition the court to decline the exercise of
4 supplemental jurisdiction, under 28 U.S.C. 1367(c).

5 Paragraph 4 of the COMPLAINT: Defendant admits that if Plaintiffs have standing and
6 jurisdiction exists, that venue is proper.

8 Paragraph 5 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
9 to the allegations in paragraph 6 of the COMPLAINT, and on that basis, Defendant denies them, save
10 as set forth herein

12 Paragraph 6 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
13 to the allegations in paragraph 6 of the COMPLAINT, and on that basis, Defendant denies them.

15 Paragraph 7 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
16 to the allegations in paragraph 7 of the COMPLAINT, and on that basis, Defendant denies them.

17 Paragraph 8 of the COMPLAINT: Defendant hereby admits that Defendant operated the
18 restaurant located at 346 Clement. Defendant denies each and every other allegation of paragraph 8 of
19 the COMPLAINT.

20 Paragraph 9 of the COMPLAINT: Defendant hereby admits that Defendant operated the
21 restaurant located at 346 Clement. Defendant denies each and every other allegation of paragraph 9 of
22 the COMPLAINT.

24 Paragraph 10 of the COMPLAINT: Defendant hereby generally denies each and every
25 allegation of paragraph 10 of the COMPLAINT.

26 Paragraph 11 of the COMPLAINT: Defendant admits that King of Thai Noodle House is a
27 restaurant located at 346 Clement Street. Defendant denies that he has engaged in “alterations,
28 structural repairs, and additions.” Defendant lacks information sufficient to form a belief as to each

1 and every other allegation in paragraph 11 of the COMPLAINT, and on that basis, Defendant denies
2 them.

3 Paragraph 12 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
4 to the allegations in paragraph 12 of the COMPLAINT, and on that basis, Defendant denies them.

5 Paragraph 13 of the COMPLAINT: Defendant denies it made any such representations.
6 Defendant lacks information sufficient to form a belief as to the allegations as to other Defendant
7 contained in paragraph 13 of the COMPLAINT, and on that basis, Defendant denies them.

9 Paragraph 14 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
10 to the allegations in paragraph 14 of the COMPLAINT, and on that basis, Defendant denies them.

12 Paragraph 15 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
13 to the allegations in paragraph 15 of the COMPLAINT, and on that basis, Defendant denies them.

15 Paragraph 16 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
16 to the allegations in paragraph 16 of the COMPLAINT, and on that basis, Defendant denies them.

17 Paragraph 17 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
18 to the allegations in paragraph 17 of the COMPLAINT. and on that basis, Defendant denies them.

19 Paragraph 18 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
20 to the allegations in paragraph 18 of the COMPLAINT, and on that basis, Defendant denies them.

22 Paragraph 19 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
23 to the allegations in paragraph 19 of the COMPLAINT, and on that basis, Defendant denies them.

24 Paragraph 20 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
25 to the allegations in paragraph 20 of the COMPLAINT, and on that basis, Defendant denies them.

26 Paragraph 21 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
27 to the allegations in paragraph 21 of the COMPLAINT, and on that basis, Defendant denies them.

1 Paragraph 22 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
2 to the allegations in paragraph 22 of the COMPLAINT, and on that basis, Defendant denies them.
3

4 Paragraph 23 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
5 to the allegations in paragraph 23 of the COMPLAINT, and on that basis, Defendant denies them.
6

7 Paragraph 24 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
8 to the allegations in paragraph 24 of the COMPLAINT, and on that basis, Defendant denies them.
9

10 Paragraph 25 of the COMPLAINT: Defendant denies receiving a letter dated December 13,
11 2007, and Defendant lacks information sufficient to form a belief as to the allegations that plaintiff
12 wrote or the subject matter of said alleged letter and on that basis but denies said allegations.
13 Defendant admits that it did not respond to a letter that it never received.
14

15 Paragraph 26 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
16 to the allegations in paragraph 26 of the COMPLAINT, and on that basis, Defendant denies them.
17

18 Paragraph 27 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
19 to the allegations in paragraph 27 of the COMPLAINT, and on that basis, Defendant denies them.
20

21 Paragraph 28 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
22 to the allegations in paragraph 28 of the COMPLAINT, and on that basis, Defendant denies them.
23

24 Paragraph 29 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
25 to the allegations relating to plaintiff's actions contained in paragraph 29 of the COMPLAINT, and on
that basis, Defendant denies them. Defendant generally denies each and every other allegation of
paragraph 29 of the COMPLAINT. Furthermore, the phrase "remedial work" is vague, and the term
"inaccessible elements" is vague.
26

27 Paragraph 30 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
28 to the allegations in paragraph 30 of the COMPLAINT, and on that basis, Defendant denies them.
Furthermore, paragraph 30(e) is vague and ambiguous.
29

1 Paragraph 31 of the COMPLAINT: Defendant denies it had any intent not to comply with the
 2 ADA at any time. Defendant lacks information sufficient to form a belief as to the remaining
 3 allegations in paragraph 31 of the COMPLAINT, and on that basis, Defendant denies them.
 4

5 Paragraph 32 of the COMPLAINT: Defendant does not know the content of Exhibit A
 6 allegedly attached to the COMPLAINT, and thus lacks information sufficient to form a belief as to
 7 the allegations relating to said letter. Defendant denies every receiving a letter. Defendant generally
 8 denies each and every other allegation of paragraph 32 of the COMPLAINT.

9 Paragraph 33 of the COMPLAINT: Defendant hereby generally denies each and every
 10 allegation of paragraph 33 of the COMPLAINT.

12 Paragraph 34 of the COMPLAINT: This answering defendant denies each and every
 13 allegation of paragraph 34 of the COMPLAINT. As to Defendant Law Sze Ching and Chan Wei
 14 Yung, Defendant lacks information sufficient to form a belief as to the allegations alleged in
 15 paragraph 34 of the COMPLAINT, and on that basis, Defendant denies them.
 16

17 Paragraph 35 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
 18 to the allegations in paragraph 35 of the COMPLAINT, relating to Plaintiff's emotional and mental
 19 injuries, and on that basis, Defendant denies them. Defendant generally denies each and every other
 20 allegation of paragraph 35 of the COMPLAINT.

21 Paragraph 36 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
 22 to the allegations in paragraph 36 of the COMPLAINT, relating to Plaintiff's emotional and mental
 23 injuries, and on that basis, Defendant denies them.
 24

25 Paragraph 37 of the COMPLAINT: Defendant generally denies each and every allegation in
 26 paragraph 37 of the COMPLAINT.

27 Paragraph 38 of the COMPLAINT: This answering Defendant generally denies each and
 28 every allegation of paragraph 38 of the COMPLAINT. As to Law Sze Ching and Chan Wei Yung,

1 Defendant lacks information sufficient to form a belief as to the COMPLAINT alleged in paragraph
2 38 of the COMPLAINT, and on that basis, Defendant denies them.

3 Paragraph 39 of the COMPLAINT: Defendant denies it has “carried out” any construction
4 alterations. Defendant generally denies each and every allegation of paragraph 39 of the
5 COMPLAINT.

6 Paragraph 40 of the COMPLAINT: Defendant admits that Plaintiff seeks relief.

7 Paragraph 41 of the COMPLAINT: Defendant admits that Plaintiff seeks relief.

8 Paragraph 42 of the COMPLAINT: Defendant hereby generally denies each and every
9 allegation of paragraph 42 of the COMPLAINT.

10 Paragraph 43 of the COMPLAINT: Defendant generally denies each and every allegation in
11 paragraph 43 of the COMPLAINT, save for admitting that plaintiff seeks an order.

12 Paragraph 44 of the COMPLAINT: Defendant generally denies each and every allegation in
13 paragraph 44 of the COMPLAINT.

14 Paragraph 45 of the COMPLAINT: Defendant generally denies each and every allegation of
15 paragraph 45 of the COMPLAINT.

16 Paragraph 46 of the COMPLAINT: Defendant denies it has received any such notice and
17 denies each and every remaining allegation of paragraph 46 of the COMPLAINT.

18 Paragraph 47 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
19 to the COMPLAINT alleged in paragraph 47 of the COMPLAINT, and on that basis, Defendant
20 denies them. Defendant denies this paragraph as to DREES, as it is not a natural person.

21 Paragraph 48 of the COMPLAINT: Defendant admits the COMPLAINT so states.

22 Paragraph 49 of the COMPLAINT: Defendant can neither admit nor deny for lack of
23 personal knowledge that “findings” were made and therefore denies each and every allegation of
24

1 paragraph 49 of the COMPLAINT. Defendant asserts that the allegations of paragraph 49 are merely
2 conclusions of law to which no responsive pleading by Defendant is required.

3 Paragraph 50 of the COMPLAINT: Defendant can neither admit nor deny for lack of
4 personal knowledge that "Congress stated as its purpose" the language cited therein, and therefore
5 denies each and every allegation of paragraph 50 of the COMPLAINT. Defendant asserts that the
6 allegations of paragraph 50 are merely conclusions of law to which no responsive pleading by
7 Defendant is required.

9 Paragraph 51 of the COMPLAINT: Defendant can neither admit nor deny for lack of
10 personal knowledge that "Congress passed" certain statutes in relation to one or another statute.
12 Defendant denies each and every other allegation of paragraph 51 of the COMPLAINT. Defendant
13 asserts that the allegations of paragraph 51 are merely conclusions of law to which no responsive
14 pleading by Defendant is required.

16 Paragraph 52 of the COMPLAINT: Defendant admits that the statute cited contains the
17 language as set forth in the COMPLAINT. Defendant asserts that the allegations of paragraph 52 are
18 merely conclusions of law to which no responsive pleading by Defendant is required.

19 Paragraph 53 of the COMPLAINT: Defendant admits that the statute cited contains the
20 language as set forth in the COMPLAINT. Defendant assert that the allegations of paragraph
21 53 are merely conclusions of law to which no responsive pleading by Defendant is required.

23 Defendant generally denies each and every other allegation contained in paragraph 53 of the
24 COMPLAINT, and on that basis, Defendant denies them.

25 Paragraph 54 of the COMPLAINT: Defendant generally denies each and every allegation in
26 paragraph 54 of the COMPLAINT.

27 Paragraph 55 of the COMPLAINT: Defendant generally denies each and every allegation in
28 paragraph 55 of the COMPLAINT.

1 Paragraph 56 of the COMPLAINT: Defendant denies performing modifications. Defendant
2 lack information sufficient to form a belief as to the allegations in paragraph 56 of the COMPLAINT,
3 and on that basis, Defendant denies them.

4 Paragraph 57 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
5 to the allegations in paragraph 57 of the COMPLAINT, and on that basis, Defendant denies them.
6 Defendant asserts that the allegations of paragraph 57 save for allegations regarding plaintiff's intent,
7 are merely conclusions of law to which no responsive pleading by Defendant is required.

8 Paragraph 58 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
9 to the allegations in paragraph 58 of the COMPLAINT, and on that basis, Defendant denies them.
10 Defendant assert that the allegations of paragraph 58 save for allegations regarding plaintiff's return to
11 the premises, are merely conclusions of law to which no responsive pleading by Defendant is
12 required.

13 Paragraph 59 of the COMPLAINT: Defendant admits Plaintiffs seek said relief.

14 Paragraph 60 of the COMPLAINT: Defendant admits the COMPLAINT so states.

15 Paragraph 61 of the COMPLAINT: Defendant admits the statute so states. Defendant asserts
16 that the allegations of paragraph 61 are merely conclusions of law to which no responsive pleading by
17 Defendant is required.

18 Paragraph 62 of the COMPLAINT: Defendant admits the statute so states. Defendant asserts
19 that the allegations of paragraph 62 are merely conclusions of law to which no responsive pleading by
20 Defendant is required.

21 Paragraph 63 of the COMPLAINT: Defendant admits the statute so states. Defendant asserts
22 that the allegations of paragraph 63 are merely conclusions of law to which no responsive pleading by
23 Defendant is required.

1 Paragraph 64 of the COMPLAINT: Defendant denies it knowingly or willfully failed or
2 refused to remove any alleged architectural at the subject property. Defendant lacks information
3 sufficient to form a belief as to the allegations in paragraph 64 of the COMPLAINT, and on that basis,
4 Defendant denies them.

5 Paragraph 65 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
6 to the allegations in paragraph 65 of the COMPLAINT, and on that basis, Defendant denies them.

8 Paragraph 66 of the COMPLAINT: Defendant admit that it operates the business, and denies
9 that it designed or constructed the entrance thereto. Defendant lacks information sufficient to form a
10 belief as to the remaining allegations in paragraph 66 of the COMPLAINT, and on that basis,
11 Defendant denies them.

13 Paragraph 67 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
14 to the allegations in paragraph 67 of the COMPLAINT, and on that basis, Defendant denies them.

16 Paragraph 68 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
17 to the allegations in paragraph 68 of the COMPLAINT, and on that basis, Defendant denies them.

18 Paragraph 69 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
19 to the allegations in paragraph 69 of the COMPLAINT, and on that basis, Defendant denies them.

20 Paragraph 70 of the COMPLAINT: Defendant admits the COMPLAINT so states.

22 Paragraph 71 of the COMPLAINT: Defendant admits the statute so states. Defendant asserts
23 that the allegations of paragraph 71 are merely conclusions of law to which no responsive pleading by
24 Defendant is required.

25 Paragraph 72 of the COMPLAINT: Defendant admits the statute so states. Defendant lacks
26 information sufficient to form a belief as to the allegations in paragraph 72 of the COMPLAINT, and
27 on that basis, Defendant denies them. Defendant assert that the allegations of paragraph 72 relating
28 to statute are merely conclusions of law to which no responsive pleading by Defendant is required.

1 Paragraph 73 of the COMPLAINT: Defendant admits the statute so states. Defendant asserts
2 that the allegations of paragraph 73 are merely conclusions of law to which no responsive pleading by
3 Defendant is required. Defendant generally denies each and every other allegation of paragraph 73.

4 Paragraph 74 of the COMPLAINT: Defendant admits.

5 Paragraph 75 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
6 to the allegations in paragraph 75 of the COMPLAINT, and on that basis, Defendant denies them.

7 Paragraph 76 of the COMPLAINT: Defendant admits that Plaintiffs are seeking said
8 expenses but denies its acts or omissions caused Plaintiffs to incur any legal fees.

9 Paragraph 77 of the COMPLAINT: Defendant admits the COMPLAINT so states.

10 Paragraph 78 of the COMPLAINT: Defendant admits the COMPLAINT so states.

11 Paragraph 79 of the COMPLAINT: Defendant denies it failed to act reasonably and prudently
12 or that or that he was negligent per se. Defendant admits the statute includes the language stated in
13 the COMPLAINT. Defendant asserts that the allegations of paragraph 79 are merely conclusions of
14 law to which no responsive pleading by Defendant is required.

15 Paragraph 80 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
16 to the allegations in paragraph 80 of the COMPLAINT, and on that basis, Defendant denies them.
17 Defendant asserts that the allegations of paragraph 80 relating to statutory language are merely
18 conclusions of law to which no responsive pleading by Defendant is required.

19 Paragraph 81 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
20 to the allegations in paragraph 80 of the COMPLAINT, and on that basis, Defendant denies them.
21 Defendant admits the statute includes the language stated in the COMPLAINT. Defendant asserts that
22 the allegations of paragraph 81 as to statutory language are merely conclusions of law to which no
23 responsive pleading by Defendant is required.

1 Paragraph 82 of the COMPLAINT: Defendant denies it designed or constructed the entrance
 2 to said property. Defendant lacks information sufficient to form a belief as to the other allegations in
 3 paragraph 82 of the COMPLAINT, and on that basis, Defendant denies them.

4 Paragraph 83 of the COMPLAINT: Defendant lacks information sufficient to form a belief as
 5 to the allegations in paragraph 83 of the COMPLAINT, and on that basis, Defendant denies them.

6 WHEREFORE, Defendant prays as set forth below.

7

8 AFFIRMATIVE DEFENSES

9 By alleging the matters set forth below under the heading "Affirmative Defenses", Defendant
 10 does not thereby allege or admit that this Defendant has the burden of proof with respect to any of said
 11 matters, or that Plaintiffs has properly asserted any cause of action against this Defendant. Without
 12 admitting any of the allegations of the COMPLAINT, Defendant alleges separate and affirmative
 13 defenses as follows:

14

15 FIRST AFFIRMATIVE DEFENSE

16 The COMPLAINT fails to state sufficient facts to constitute a cause of action against this
 17 answering Defendant upon which relief can be granted and that the acts complained of in the
 18 COMPLAINT do not constitute a denial of access or evidence a policy of denying access to persons
 19 with disabilities.

20

21 SECOND AFFIRMATIVE DEFENSE

22 Plaintiffs have failed to act reasonably to mitigate his damages, if any; there might be which
 23 Defendant specifically denies.

24

25 THIRD AFFIRMATIVE DEFENSE

26 Defendant are informed and believes and that on that basis alleges that the alleged claims of

1 Plaintiffs are barred by the doctrine of unclean hands.

2

3 FOURTH AFFIRMATIVE DEFENSE

4 Plaintiffs have waived any rights, which he might otherwise have arising from any acts,
5 omissions or breaches of Defendant.

6

7 FIFTH AFFIRMATIVE DEFENSE

8 Plaintiffs are estopped to complain of any act or omission on the part of Defendant.

9

10 SIXTH AFFIRMATIVE DEFENSE

11 Defendant are, and at all relevant times was, in compliance with all applicable statutes,
12 ordinances, laws or regulations that may applicable to the subject property.

13

14 SEVENTH AFFIRMATIVE DEFENSE

15 All construction and/or reconstruction of the subject property, if any there were, was
16 undertaken and performed in compliance with the affirmative direction by and/or approval of the
17 enforcement agency(ies) having jurisdiction over the property.

18

19 EIGHTH AFFIRMATIVE DEFENSE

20 The COMPLAINT, and each cause of action thereof, is barred by the applicable statutes of
21 limitation.

22

23 NINTH AFFIRMATIVE DEFENSE

24 The COMPLAINT, and each cause of action thereof, fails to state facts sufficient to constitute
25 a cause of action or claim for statutory damages or attorney fees against this answering Defendant.

26

27 TENTH AFFIRMATIVE DEFENSE

28 At the time of the incidents alleged in the Plaintiffs' COMPLAINT, Plaintiffs failed to

1 exercise reasonable or ordinary care for their own safety such that the injuries and damages allegedly
 2 sustained by Plaintiffs were proximately caused or contributed to by his own negligence. Plaintiffs
 3 could have avoided the injury by the exercise of ordinary care.

4

5 ELEVENTH AFFIRMATIVE DEFENSE

6 Plaintiffs have unreasonably delayed in bringing this action to the prejudice of the answering
 7 Defendant and are therefore barred from bringing this action by the Doctrine of Laches.

8

9 TWELFTH AFFIRMATIVE DEFENSE

10 Plaintiffs are at fault, through their own negligence or otherwise, in and about the matters
 11 referred to in the COMPLAINT, and such fault on the part of Plaintiffs proximately caused and
 12 contributed to the damages complained of, if any there are. This answering Defendant further alleges
 13 that any fault not attributable to Plaintiffs was a result of fault on the part of persons and/or entities
 14 other than this answering Defendant. Such fault bars and/or proportionately reduced any recovery by
 15 Plaintiffs against this answering Defendant.

16

17 THIRTEENTH AFFIRMATIVE DEFENSE

18 Should Plaintiffs recover damages from this answering Defendant, this answering Defendant is
 19 entitled to indemnification, either in whole or in part, from all persons or entities whose negligence
 20 and/or fault proximately contributed to Plaintiffs' damages, if any there are.

21

22 FOURTEENTH AFFIRMATIVE DEFENSE

23 Third persons, including persons or entities unknown to this answering Defendant,
 24 intentionally, and/or negligently caused the injuries alleged in Plaintiffs' COMPLAINT; that said acts
 25 of these unknown third persons were active, primary, and the proximate cause of the injuries and
 26 damages complained of, if any there were any. Plaintiffs' recovery against this answering Defendant,
 27

1 if any, should be reduced by an amount proportionate to the amount by which such other person or
 2 entity's negligence and fault contributed to the happening of the alleged damages.
 3

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 Defendant alleges that Plaintiffs lacks standing to sue and has not been harmed and will not be
 6 harmed in the future; Plaintiffs lacks standing arising from an absence of a redressible injury-in-
 7 COMPLAINT, and there is no reality of the threat of repeated injury. Plaintiffs did not enter the
 8 restaurant for purposes of accessing a public accommodation within the meaning of the Title III of the
 9 ADA. Plaintiffs' alleged injury is neither actual nor imminent. Plaintiffs lack standing to challenge
 10 any ADA violation unrelated to plaintiff Yate's particular disability, as alleged in the COMPLAINT.
 11

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 Defendant alleges that, to the extent Plaintiffs alleges failure to remove barriers, his claim fails
 14 in whole or in part because there was no legal obligation to remove barriers in the circumstances of
 15 this case. Removal of the barrier is not readily achievable without undue difficulty and expense.
 16 Defendant does not have the resources to remove the barrier. Existing conditions at the property make
 17 it such that removal of the barrier is not readily achievable.
 18

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 Defendant alleges that Plaintiffs' claims are barred as to any claims based on construction or
 21 alterations that preceded Defendant' operation of the subject premises, or any claims based on work
 22 performed by occupants other than Defendant, or claims based on conditions subsequent to
 23 Defendant' operation of the premises.
 24

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 Defendant alleges that Plaintiffs are not entitled to some or all of the relief sought, and
 27 Defendant was not the proximate or legal cause of damage alleged to Plaintiffs.
 28

29 **NINETEENTH AFFIRMATIVE DEFENSE**

30 Defendant alleges that Plaintiffs' maintenance of this action is without foundation, vexatious,
 31 and unreasonable, entitled Defendant to an award of attorneys' fees in this matter.
 32

TWENTIETH AFFIRMATIVE DEFENSE

Defendant alleges that its conduct was lawful and subject to the rule of justification.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant alleges that all acts allegedly committed by Defendant were reasonable and in good faith.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant alleges that the alleged barriers do not pose a significant risk to the health or safety of Plaintiffs or individuals with disabilities.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiffs are collaterally estopped from pursuing this action.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant alleges that any entry by Plaintiffs into the restaurant at issue was pursuant to the litigation privilege and Plaintiffs are barred from pursuing claims based on such entry.

WHEREFORE, Defendant prays this Honorable Court for the following relief:

1. That Plaintiffs take nothing by reason of their COMPLAINT and that Plaintiffs' action be dismissed with prejudice;
 2. For an order that Plaintiffs shall take no relief from his COMPLAINT herein;
 3. For an award of Defendant' reasonable attorneys' fees incurred herein; and
 4. For such and other further relief as the Court deems proper.

Dated: June 26, 2008

LAW OFFICES OF JANET BRAYER

By: /S/ Janet Brayer
JANET BRAYER
Attorneys for Defendant
KING OF THAI NOODLE #2 INC.